case so far as I know is good law still and it is not disputed that the limitations in question are good in China.

The converse of this case appears in the case of *Freke v. Lord Carbery*[3]. There a domiciled Irishman directed by will that all his property should be realised and applied to certain trusts which infringed the rule against perpetuities. That rule however is not in force in Ireland but part of the property consisted of a leasehold house in Belgrave Square in London. The rule of perpetuities was held to apply to the trust impressed upon the London property because it was situated in England.

In my opinion the trust under the will is good and all the executors have to do is to purchase the property in China and obtain a receipt for it from "the male descendants" of the testator according to the law of China.

The costs of all parties will come out of the estate.

Judgment accordingly.

Johannes & Sammy, Solicitors for the Plaintiff.

A. V. L. Davies & Co., Solicitors for the Defendants.

J. G. Campbell & Co., Solicitors for Ng Eng Hoo.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J.

June 4, 1940.

F. C. SECK TRADING AS OVERSEA STRUCTURAL COMPANY

(Appellant)

v.

WONG AND LEE

(Respondents).

[SINGAPORE DISTRICT COURT APPEAL No. 2 of 1940]

Money paid under mistake of law—Power of Court to relieve against mistake of law in certain circumstances.

Money paid with a full knowledge of all the facts if paid under a mistake of law on the part of both parties cannot, generally speaking, be recovered back; but the Court has power to relieve against mistakes in law as well as against mistakes in fact if there is any equitable ground which makes it in the particular facts of the case inequitable that the party who received the money should retain it.

The Plaintiff (a building contractor) paid the Defendants (the architects for certain building works) the sum of $500/- which the Defendants demanded for a copy of certain reinforced concrete plans without which the work could not be carried out by the Plaintiff. The Defendants had no justification for demanding any such sum, the supplying of plans being covered by the architects' general fee paid by their employers.

Held, that as the Defendants had improperly taken advantage of the Plaintiff's ignorance, the Court would grant relief to the Plaintiff and would order the Defendants to repay the $500/- to the Plaintiff.

Cases referred to:—

(1) *Rogers v. Ingham,* 3 Ch. Div. 351 at p. 357.

(2) *Stone v. Godfrey* De G. M. & G. p. 90.

APPEAL.

E. M. Tampoe-Phillips for appellant (Plaintiff in the Suit).

A. P. Raja for Respondents (Defendants in the Suit).

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—On the 11th March, 1939, Haw Par Brothers entered into a contract with the plaintiff (the present appellant) to erect and complete a swimming pool, together with ancillary buildings, at Pasir Panjang. The contract, as is usual, incorporated certain conditions and specifications which were annexed thereto. The drawings and specifications were prepared by A.C. Lee, an architect, and a member of the defendant firm of Wong & Lee. Paragraph 3 of the conditions provided that a complete copy of the signed drawings and specifications should be furnished by the architect to the contractor, and that the architect should also furnish a copy of any additional drawing which in his opinion might be necessary for the execution of the work.

The specification under the heading 'drawings' amplifies para. 3 of the conditions and provides as follows:—

> "**Drawings.** The contractor shall be supplied with a copy of the passed plan and one copy of all other detailed plans necessary for the execution and completion of the work by the architect, but all extra copies shall be paid (for) by the contractor."

There is no doubt whatever that on the true construction of these provisions one copy of the plans had to be supplied free. The contractor did in fact ask for an extra copy for which he paid $5/- (see

exhibit B). It is common ground that the defendants were entitled to this $5/- by virtue of the provision in the specification quoted above.

The architects, however, also demanded $500/- for the original copy of the reinforced concrete plans, without which the work could not be carried out, and the plaintiff paid the architects the sum of $500/- on the 18th March, 1939. The defendants have not seriously contended either before the District Judge or before the Supreme Court that they had a shadow of justification for the demand of $500/- on the construction of the agreement. There were some sort of suggestion in the Court below that such a payment was sanctified by custom, but no evidence in support of any such custom was called. In fact the defendants preferred not to give evidence at all. Their case, to put it bluntly, was that the plaintiff having parted with his $500/- could not get it back; and that if he had paid it under a misapprehension of his legal rights, there was no equity to grant him any relief.

Fortunately that is not, in my opinion, the law. It is true that an action will not generally lie to recover back money paid under a mistake in law where both parties are fully cognizant of the facts, but that principle does not apply where, as in the present case, the plaintiff, a Chinese contractor, was ignorant of his legal rights under a series of complicated documents, and where the defendants, who are architects of long standing, must be deemed to have been perfectly well aware of the legal position. As Mellish L.J. said in *Rogers v. Ingham*[1]:—

> "But on the other hand I think that, no doubt, as was said by Turner, L.J. 'This Court has power (as I feel no doubt that it has) to relieve against mistakes in law as well as against mistakes in fact' (**Stone v. Godfrey**[2]) that is to say, if there is any equitable ground which makes it, under the particular facts of the case, inequitable that the party who received the money should retain it."

The supplying of plans is of course part of the duties of architects and is covered by their fee, and it is highly inequitable that they should obtain and attempt to retain additional fee from the contractor for something for which they were already paid or entitled to be paid by their employers. It is not too much to say that they improperly took advantage of the plaintiff's ignorance, and in such a case a Court of Equity will grant relief.

The learned District Judge decided against the plaintiff on the sole ground that the defendants were not parties to the contract between the employer and the contractor. With all respect to the learned District Judge I fail to follow this reasoning. The plaintiff is not suing on the contract; he is suing for money paid to the defendants under a mistake of law. The contract is merely evidence to prove the rights of the plaintiff thereunder and the duties of the defendants as the employers' agents for the purposes specified in the contract. The $500/- was not paid in pursuance of the contract, nor could the plaintiff have any claim against the employers for something which the defendants did beyond the scope of their authority and in violation of their duties.

As regards the suggested custom, it is not open to parties to prove a custom which is in contradiction to the express terms of a written contract. That being the case it is unnecessary to refer back the case for proof of a custom which so far has not been established, and would in my opinion be irrelevant if it were established.

The appeal must, therefore, be allowed and judgment entered for the plaintiff for $500/- and costs in the Court below. The appellant will be entitled to the costs of the appeal and the deposit should be paid out to him or his solicitor.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.A.
March 21, 1940.

BALDWYN LOWICK AND ANOTHER
v.
THOMAS ALFRED MAYHEW & ANOTHER.

[SINGAPORE SUIT No. 436 of 1936]

Civil Procedure Rules—Costs—Schedule C Item 131—Perusal of Summons in Chambers.

On a party and party taxation no fee can be charged under item 131 of Schedule C for perusal of a summons in chambers. Item 152 however contemplates that there may be perusals for which a fee can be charged on solicitor and client taxations but which would not be allowed on a party and party taxation, there being in the Colony a discretion to make such an allowance.

Case referred to:—

(1) *Alcock Ashdown & Co. v. Chief Revenue Authority Bombay*, 50 I.A. 238.

SUMMONS IN CHAMBERS.

F. H. O'Reilly for applicants.

R. H. Green for respondents.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, J.A.—This is a summons to review a taxation by the Registrar who disallowed an item of $8/- for perusing a summons in chambers.